IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6208 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAHYABHAI MOHANBHAI SINDHAV - Petitioner(s)
Versus
VIPUL MITRA & 1 - Respondent(s)

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Appearance :
MR RS SANJANWALA for Petitioner(s) : 1,
MS TRUSHA PATEL, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/09/2007

ORAL JUDGMENT

The petitioner herein challenges the order dated 29th August 1995 passed by the Collector, Ahmedabad, as upheld by the appellate order passed by the State Government on 18.7.96.

2. On 16th September 1993, the authorities detected that in an open piece of land belonging to one Vithalbhai, kerosene was being transferred from a tanker to different barrels through a pipeline. Upon interception, authorities found that certain quantity of kerosene was lying in tanker and barrels. Upon being interrogated, driver could not produce the permit to store or to sell kerosene. Upon his statement, it was found that the tanker in question belonged to the petitioner. The authorities, therefore, issued a show cause notice to the petitioner on 5.6.95 calling upon him to explain as to why the kerosene contained in the barrels as well as in the taker valued at Rs.24,380/- be not confiscated as also the tanker valued at Rs.3,50,000/- and the empty barrels, 46 in number, valued at Rs.5650/- also be not confiscated.

3. The petitioner filed detailed reply to the said show cause notice by is representation dated 1st August, 1995.

4. The Collector, thereafter, passed order dated 29.8.95 ordering confiscation of the kerosene as well as the tanker. Since in the meantime, the tanker was released on giving a bond, the Collector ordered encashment of the bond for a sum of Rs.3,50,000/- for recovery of the amount through execution against bond.

5. The appeal filed by the petitioner came to be rejected by the State Government. The petitioner, therefore, approached this Court by filing this petition.

6. Before the authorities, the petitioner had strenuously contended that the tanker found involved in the incident did not belong to the petitioner. In fact, he also suggested that the application for release of the tanker also was not made by him nor the bond was executed by him. The petitioner suggested that the application as well as the bond contained his forged signatures.

7. Admittedly, before the authorities, this was the main argument of the petitioner and it was the stand of the petitioner that he had nothing to do with the tanker in question.

8. In the present petition, however, the petitioner has taken a substantially different stand. It is primarily contended that in any case, the authorities ought to have given an option to the petitioner to pay fine in lieu of confiscation of the vehicle for an amount equivalent to the value of the quantity of the kerosene seized.

9. At the outset, it may be noted that the authorities found that the tanker in question was registered in the name of the petitioner. The stand of the petitioner that application for release of the

vehicle as well as the bond executed for such release contained forged signatures of the petitioners was also not believed by the authorities. Apparently, there is nothing to suggest that the petitioner ever filed a criminal complaint regarding such forgery. It would, thus, appear that for a serious allegation of forging of signatures of the petitioner, which would possibly make the petitioner liable to pay a sum of Rs.3,50,000/-, he took no steps to ventilate his grievance nor filed a criminal complaint before the police.

10. In the present petition, as noted, the petitioner took a diametrically opposite stand and suggested that even if he is found to be liable, his liability should have been confined to the value of the goods seized plus the similar amount in lieu of confiscation of the vehicle.

11. Ordinarily, I would have been justified in rejecting the petition only on this ground refusing to exercise the discretionary writ jurisdiction in favour of a person who so blatantly disowns his signatures without any seriousness about ultimate consequence. However, I find that the petitioner has raised a valid legal contention. The petition, therefore, should be entertained subject to certain conditions.

12. It is not possible to dispute that the petitioner ought to have been offered payment of fine

in lieu of confiscation of the vehicle as provided in proviso to section 6A(1) of the Essential Commodities Act. The same has not been done.

13. Considering the facts and circumstances, instead of remanding the proceedings to the authorities, this petition is disposed of by giving following directions.

13.1 In lieu of confiscation of the tanker in question, the petitioner shall have an option to pay a sum of Rs.24,380/-. The same shall carry compound interest at the rate of 9 per cent per annum from the date of show cause notice till its actual payment.

13.2 The petitioner shall, in writing, indicate to the authorities his desire to pay the above-mentioned amount within a period of four weeks from today and tender the said amount as per his calculation within the same period, subject to, further recovery in case of the authorities find that the amount tendered is short of the amount specified hereinabove.

13.3 The petitioner shall pay cost of Rs.5,000/- to the respondents, which shall be paid within a period of four weeks from today.

13.4 In case the petitioner fails to fulfill any of the above conditions, this petition shall be deemed to have been dismissed automatically.

14. The impugned orders stand modified accordingly.

Rule is made absolute to the above extent.

(Akil Kureshi, J.)

(vjn)